

REMARKS

Claims 1-9 are pending.

Claims 4-6 and 8-9 are withdrawn due to a restriction requirement.

Claims 1-4 and 8-9 are currently amended to properly identify the crystalline polymorph Form G of (\pm)-7-(3-(4-fluorophenyl)-1-(1-methylethyl)-1H-indol-2-yl)-3,5-dihydroxy-6-heptenoic acid monosodium salt which is the only crystalline polymorph claimed.

Claim 7 is cancelled.

No new matter is added.

Product claims 1-3 and process claims 4-6 and 8-9 are presented for reconsideration and rejoinder.

Restriction Requirement/Rejoinder

Claims 1-9 are subject to restriction as set forth in a previous Office Action. Responsive thereto, the election of Group I, corresponding to claims 1-3 and 7, was affirmed.

In the previous Office Action, the Examiner made the restriction requirement final.

Claim 7 is cancelled.

The Applicants request that if the product claims 1-3 are found allowable then the process claims for making the crystalline polymorph Form G of (\pm)-7-(3-(4-fluorophenyl)-1-(1-methylethyl)-1H-indol-2-yl)-3,5-dihydroxy-6-heptenoic acid monosodium salt, claims 4-6 and 8-9, be rejoined with said product claims. The withdrawn process claims 4-6 and 8-9 depend from claims 1-3 and include all the limitations of the product claims.

Accordingly, the Applicants request that Group I, claims 1-3, and Group II, claims 4-6 and 8-9, be rejoined.

Claim Rejection – 35 USC 112 Second Paragraph

Claims 1-3 and 7 are rejected under 35 USC 112 second paragraph as being indefinite for failing to particularly point and distinctly claim the subject matter which applicant regards as the invention. Claims 1-3 and 7 do not contain sufficient physical data that particularly points out and distinctly claims the product that Applicant regards as the invention.

Claims 1-3 are currently amended to properly identify the crystalline polymorph Form G of (\pm)-7-(3-(4-fluorophenyl)-1-(1-methylethyl)-1H-indol-2-yl)-3,5-dihydroxy-6-heptenoic acid monosodium salt which is the only crystalline polymorph claimed.

Claim 7 is cancelled.

The Applicants emphasize further that each of claims 2 and 3 depend from claim 1. This clearly indicates that the polymorphic form of claim 2 as well as the one of claim 3 is the same as the one of claim 1. Claims 2 and 3 differ from claim 1 only in the characterization of form G, including reflections of lower intensity. Claims 2 and 3 do not differ from claim 1 in the scope of material claimed.

The Applicants therefore aver that the 35 USC 112 second paragraph rejection is addressed and overcome.

Claim Rejection – 35 USC 112 First Paragraph

Claim 7 remains rejected under 35 USC 112 first paragraph as failing to comply with the enablement requirement. The claim contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains or with which it is most nearly connected, to make and/or use the invention.

Claim 7 is cancelled.

The Applicants therefore aver that the 35 USC 112 first paragraph rejection is addressed and overcome.

Claim Rejections – 35 USC 102(b)

Claims 7 remains rejected under 35 USC 102(b) as being anticipated by Van der Scaaf et al. in WO 2002/36563 (US 6,858,643) and Van der Shaaf et al. in US 2003/0032666 (US 6,696,479).

Claim 7 is cancelled.

The Applicants therefore aver that the 35 USC 102(b) rejection is addressed and overcome.

Claim Rejections – Double Patenting

Claim 7 is rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 7 and 20 of US 6,858,643.

Claim 7 is rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 11 and 12 of US 6,696,479.

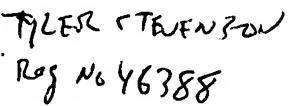
Claim 7 is cancelled.

The Applicants therefore aver that the nonstatutory obviousness-type double patenting rejections are addressed and overcome.

The Examiner is kindly requested to reconsider and to withdraw the present rejections and objections.

Applicants submit that the present claims are in condition for allowance and respectfully request that they be found allowable.

Respectfully submitted,


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